

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 478 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

NARSHIBHAI D PATEL

Versus

MANOKAMNA PARSNATH SING

Appearance:

MR SHIRISH JOSHI for Petitioner
MR BC DAVE for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 27/04/98

ORAL JUDGEMENT

Rule.

Heard learned counsel for the parties. The plaintiff respondent filed a summary suit in the court of Civil Judge (J.D.), Baroda, for recovery of Rs. 31,800/-. The case of the plaintiff is that loan of Rs. 30,000/- was advanced to the defendant. The defendant petitioner had given a cheque dated 4.7.1996 on the State

Bank of Saurashtra and the said cheque was dishonoured. In an application leave to defend Exh. 10, the defendant-petitioner denied the allegation. According to him the entire story is false. He also denied his signatures on the cheque. The trial judge considering the facts and circumstances of the case granted leave to defend on the condition that the petitioner deposits 50% of the suit amount.

It is contended by Mr. Shirish Joshi, learned counsel for the petitioner that the cheque was returned by the bank on the ground that the signature is doubtful. This clearly indicates that this cheque is forged. In view of this, the defendant-petitioner has a good defence to claim on merit that the plaintiff is not entitled to leave to sign the judgement and the defendant petitioner is entitled to unconditional leave to defend. On the other hand Mr. Dave submits that there is ample evidence to show that the loan was taken by the defendant. Cheque is also from the cheque book of the defendant.

Having considered the rival submissions of the parties, in my view, this revision application deserves to be allowed. The Supreme Court in the case of MECHALEC ENG. & MANF. VS. BASIC EQ. CORPN. AIR 1977 S.C. 577 has laid down the propositions in the matter of grant of leave to defend in a suit under Order 37 Rule 3 of C.P.C. Apparently there is a triable issue when the defendant denies his signatures on the cheque. Even according to the bank drawer's signature differs. In view of this, the present case clearly false if not in clause (a) but in any case under clause (b) of the proposition laid down in the aforesaid case by the apex court. In a case where the defendant raises a triable issue indicating that he has a fair or bona fide or reasonable defence although not a positively good defence the plaintiff is not entitled to sign judgement and the defendant is entitled to unconditional leave to defend. The learned judge while passing the impugned order has completely overlooked the principles laid down by the Supreme Court in the aforesaid case. In view of the aforesaid this revision application is allowed. The impugned order dated 19.1.1998 passed by the learned Civil Judge (J.D.) Baroda is quashed and set aside. The petitioner-defendant's application Exh. 10 is accordingly granted. Rule made absolute.

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pkn.